

Writ Petition No. 435 M/S) of 2002.

Avinash Mishra Petitioner.

Versus

State of Uttaranchal through Home
Secretary, Dehradun and another. Respondents

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Hon'ble P.C. Verma, J.

Heard learned counsel for the petitioner as well as learned
Additional Govt. Advocate.

According to the learned counsel for the petitioner, the petitioner
was sought to be prosecuted for the offence under Sections 364, 120-B
read with Sections 302, 201 & 220 of the Indian Penal Code for which
sanction under Section 197 of the Criminal Procedure Code was not
obtained. Despite this the cognizance has been taken by the Special
Judicial magistrate (C.B.I.) Dehradun and he is proceeding with the trial.

The learned Additional Government Advocate submitted that the
question of sanction to take cognizance and to continue with the trial
without sanction can be raised before the trial Court at any stage of trial
and the trial Court will be the competent Court to decide the issue.
Therefore, it is not a fit case warranting interference of this Hon'ble
Court.

I find force in the contention of the learned counsel for the State.
The petitioner may raise the aforesaid objection before the trial Court.
The trial Court shall decide the issue within a period of one month from
the date of presentation of certified copy of this order.

Learned counsel for the petitioner submitted that in view of the law laid down by the Hon'ble Apex Court in the case Pepsi Foods Ltd. & another versus Special Judicial Magistrate and others, reported in 1998 (5) Supreme Court Cases, page 741 and in the case G. Sagar Soori and another versus State of U.P. and others, reported in 2000 (2) Supreme Court Cases, page 636 since the proceedings are liable to be quashed for want of the sanction, therefore, arrest of the petitioner may be stayed.

Considering the facts and circumstances of the case, it is provided that the petitioner shall not be arrested in case crime No.R.C.-2-(S)/95-S.I.C.-IV/New Delhi registered in Case No.1419 of 2001. However, he shall be permitted to appear through counsel before the Court. The Special Judicial Magistrate (C.B.I.), Dehradun is directed to decide the question continuance of the trial for want of sanction within a period of fifteen days from the date of production of certified copy of this order.

With the aforesaid observation, the petition is disposed of finally.

(P.C. Verma, J.)

20.6.2002
P.Singh